IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.1664 OF 2004

Satish Balwant Kulkarni ..Petitioner

Vs.

Mukund Balkrishna Kulkarni
and Anr. ..Respondents

...

Mr.A.V.Anturkar with Mrs.Vinita V.Bakre-Shastry
and Ramesh A.Korare for Petitioner
Mr.P.K.Hushing for Respondents.

...

CORAM : B.H.MARLAPALLE,J.

DATE : MAY 2,2005

P.C.:

1. Heard the learned counsel for the respective parties.

2. In final Decree Application in RCS No.402 of 1984, two applications at Exhs.10 and 21 were filed by the original defendant-present petitioner. The application at Exh.10 was for appointment of Court Receiver and the application at Exh.21 was for directions to produce the records and hand over to the Court Receiver. Both these applications came to be allowed by the learned IVth Jt.C.J.J.D. Pune vide his order dated 15.12.2004. One Mr.A.B.Kulkarni was appointed as a Court Receiver and he was a third

party and the record was directed to be handed over to him. The said order came to be challenged in Misc. Civil Appeal No.413 of 2004 by the original defendant no.2 and the learned Ist Ad-hoc Additional District Judge was pleased to allow the appeal partly vide his order dated 20.1.2005. Though the Petitioner's appeal has been partly allowed, he is before this Court mainly because of some observations made by the lower appellate Court regarding the date of dissolution etc. The appointment of Mr.A.B.Kulkarni as Court Receiver has been cancelled and the Petitioner has been appointed as the Court Receiver by the lower Appellate Court. This order has not been challenged by the original plaintiff and hence, the lower appellate Court's order below Exh.10 need not be disturbed.

3. If the Petitioner himself is the Court Commissioner and as the remaining partner has been running defendant no.1 firm, it is obvious that the records have been in his possession. He has to take requisite steps to wind up the affairs of the firm and to complete the transactions already begun but remained unfinished at the time of dissolution of the firm and submit details within one month to the Court below. In normal course, there is no difficulty in implementing this order as well. However, the lower appellate Court made some observations regarding the

date of dissolution which noted that on one hand, the date of dissolution would be after two months from the date of original decree passed by the trial Court whereas, on the other hand, it also noted that the date of dissolution would be after the period of two months from the judgment of the Supreme Court. However, no final opinion on this issue has been recorded by the lower appellate Court.

4. It is clarified that the date of dissolution will have to be decided by the Court below before whom the final decree application is pending and that too as per law after hearing the parties concerned. The challenge to the impugned order in this petition need not be entertained at this stage and more so, when the lower appellate Court has not recorded its opinion about the date of dissolution. Needless to mention that the final decree application pending will have to be decided within a fixed period and more so, when the resolution passed for dissolution of the partnership firm is dated 11.2.1983 and the decree passed by the trial Court is dated 2.5.1996. The date of dissolution of partnership will be decided by the trial Court without being influenced by any observations made by the lower appellate Court in the impugned order and within a period of three months from receiving the writ from this Court and the Court Receiver appointed, will proceed to take

steps for submitting the accounts, details of the assets etc. after the said date is determined but he shall not be entitled to create any third party interest by any means unless he obtains the order from the trial Court.

5. The petition is disposed of in the above terms.

6. Certified copy expedited.

7. Writ to go to the trial Court forthwith.

[B.H.MARLAPALLE,J.]